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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 United States of America,

9
10 Plaintiff,

11 vs.

12 Samuel Ward,

13
14 Defendant.
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No. CR-15-50162-PHX-SPL (JZB)

REPORT AND RECOMMENDATION

16 TO THE HONORABLE STEVEN P. LOGAN, UNITED STATES DISTRICT JUDGE:

17 Pending before the Court is a Superseding Petition, filed on February 3, 2017,
18 alleging violations of supervised release. Pursuant to a Standing Order of Referral, dated
19 July 2, 2014, the Honorable Steven P. Logan, United States District Judge, referred the
20 Petition to Revoke Supervised Release in the above-numbered case to the undersigned
21 Magistrate Judge to conduct a “hearing and preparation of findings and recommendations
22 . . . and submit the necessary Report and Recommendation . . .” as authorized under 18
23 U.S.C. § 3401(i) and 28 U.S.C. § 636(b)(3). The parties consented in writing that this
24 Magistrate Judge conduct this hearing on the Petition. (Doc. 27.)

25 **I. Procedural Background**

26 On July 19, 2016, Defendant was sentenced to 5 months of imprisonment and 31
27 months of supervised release for a violation of supervised release. (Doc. 16.) On
28 February 3, 2017, a Superseding Petition was filed alleging three violations of

1 Defendant's supervised release.

2 On October 7, 2017, this Court conducted an evidentiary hearing. The
3 Government proceeded on the three allegations in the Superseding Petition:

4 Allegation A: **Special Condition #1** which states, "*You shall participate as*
5 *instructed by the probation officer in a program of substance abuse*
6 *treatment which may include testing for substance abuse. You shall*
7 *contribute to the cost of treatment in an amount to be determined by the*
8 *probation officer.*"

9 Ward failed to report to BSSW October 12, 2016, as directed. During a
10 meeting in the probation office on October 11, 2016, Ward was directed, in
11 writing, to report to Behavioral Systems Southwest (BSS) October 12,
2016, and to submit to substance abuse testing. Grade C violation
§7B1.1(a)(3).

12 Allegation B: **Special Condition #4** which states, "*At the discretion of the*
13 *probation officer, you shall actively participate in a residential program as*
14 *directed by the probation officer until discharged by the probation officer,*
15 *but not to exceed 180 days without a Court review. Placement may include,*
16 *singularly or in any combination, a residential re-entry center, a halfway*
17 *house, inpatient drug treatment or a drug-free sober living environment as*
18 *selected by the probation officer.*"

19 Ward reported to BSSW, at approximately 8am, October 21, 2016, but left
20 the facility before completing the intake process and failed to return. On
21 October 20, 2016, Ward was accepted into Behavioral Systems Southwest
(BSSW), a residential re-entry center located in Phoenix. His supervising
officer contacted him by phone the same date and directed him to report to
BSSW October 21, 2016, to complete the intake process. His whereabouts
are unknown. Grade C violation §7B1.1(a)(3).

22 Allegation C: **Standard Condition #7** which states, "*The defendant shall*
23 *refrain from excessive use of alcohol and shall not purchase, possess, use,*
24 *distribute, or administer any controlled substance or any paraphernalia*
25 *related to any controlled substance, except as prescribed by a physician.*"

26 Ward abused methamphetamine October 21, 2016. Ward submitted to
27 substance abuse testing October 21, 2016, and tested positive for
methamphetamine. Grade C violation §7B 1.1 (a)(3).

1 (Doc. 26 at 1-2.)

2 Defendant was present and assisted by counsel. The Government called Senior
3 Probation Officer Kimberly Peterson and admitted Exhibit 1 into evidence without
4 objection by Defendant. Defendant testified.

5 **II. Findings of Fact**

6 The Court submits the following findings of fact.

7 **a. Senior Probation Officer Kimberly Peterson**

8 On October 11, 2016, Officer Peterson met with Defendant and reviewed his
9 conditions of supervised release. Defendant and Officer Peterson signed a copy of the
10 terms of Defendant's Supervised Release. Defendant was ordered, in writing, to report to
11 BSSW on October 12. Defendant did not report to BSSW on October 12, 2016.

12 On October 17, Officer Peterson spoke with Defendant. Defendant was directed to
13 submit for urinalysis testing. Defendant submitted to testing, and the testing was negative
14 for drug use.

15 On October 20, Officer Peterson directed Defendant to report to BSSW on
16 October 21, 2016. Defendant reported to BSSW on October 21 in the morning, and he
17 submitted to a drug test. Defendant did not complete his intake assessment because he
18 asked for permission to leave for a job interview. He was given permission to leave
19 BSSW to participate in the job interview, but was instructed to return that day.
20 Defendant did not return to BSSW that day, and his whereabouts were unknown. The
21 staff at BSSW did not express concern to Officer Peterson regarding Defendant's mental
22 health. Defendant's drug test was submitted to Alere laboratory, and Defendant's test
23 was positive for amphetamine use. (*See Exhibit 1.*)

24 On November 9, 2016, Defendant was arrested on the warrant in this case by Salt
25 River Police Department officers. Officer Peterson had no contact with Defendant after
26 he failed to return to BSSW on October 21. Defendant's failure to return to BSSW on
27 October 21 violated his duty to abide by Special Condition #4.

28 Officer Peterson agreed that Defendant had serious mental health issues.

1 Defendant was provided a seven-day supply of Risperdal on or about October 8.
2 Defendant's supply of Risperdal was likely to run out on October 15. Officer Peterson
3 spoke with Defendant about contacting Urgent Psychiatric Care to obtain additional
4 medication. Officer Peterson did not know if Defendant went to Urgent Psychiatric Care.

5 **b. Defendant Samuel Ward**

6 Defendant agreed he had mental health issues. He was prescribed Risperdal while
7 in prison. Without Risperdal, he loses "clarity" and his visions/hallucinations become
8 worse. Defendant's supply of Risperdal ran out on October 14.

9 Defendant understood his supervised release obligations. After his October 11,
10 2016 meeting with Officer Peterson, he attempted to comply with his obligations by
11 seeking government identification, going to the Red Cross, and attempting to comply
12 with drug-testing obligations. He was unable to go to BSSW on October 12 because he
13 did not have transportation.

14 Defendant spoke with Officer Peterson on October 17 and understood his
15 obligation to appear at BSSW on October 21. Defendant appeared at BSSW on October
16 21. Defendant did not explain why he failed to return to BSSW on October 21 as
17 directed. He stated that he no longer had medications on October 21, and his life is
18 "topsy-turvy" and full of "gaps" when he is not medicated.

19 Defendant did not call Officer Peterson after he failed to appear at BSSW on
20 October 12. Defendant did not call Officer Peterson after he failed to return to BSSW on
21 October 21.

22 **III. Conclusions of Law**

23 "A district court may 'revoke a term of supervised release, and require the person
24 to serve in prison all or part of the term of supervised release...if the court...finds by a
25 preponderance of the evidence that the defendant violated a condition of supervised
26 release.'" *United States v. Vallejo*, 69 F.3d 992, 994 (9th Cir. 1995) (quoting 18 U.S.C. §
27 3583(e)(3)). The Court is required to determine if Defendant (1) participated as
28 instructed in a program of substance abuse treatment (Allegation A), (2) actively

1 participated in a residential program as directed (Allegation B), and (3) used
2 methamphetamine (Allegation C).

3 **a. (Allegation A) Substance Abuse Treatment Participation**

4 It is undisputed that Defendant failed to report to BSSW on October 12, 2016 as
5 ordered. Defendant understood the requirement, but he stated he did not have
6 transportation. Defendant's mental health issues did not prevent compliance because he
7 still had a supply of Risperdal on October 12. Defendant did not attempt to contact
8 Officer Peterson after his failure to appear at BSSW.

9 The Court finds that Defendant failed to participate in substance abuse treatment
10 as directed when he failed to appear at BSSW on October 12.

11 **b. (Allegation B) Participation in Residential Program**

12 Defendant understood his obligation to report to BSSW on October 21 because he
13 appeared and began intake processing. He received permission to leave BSSW to
14 participate in a job interview. Defendant did not return. It is undisputed that Defendant
15 has serious mental health issues. There is no evidence that Defendant had mental health
16 medications between October 15, 2016 and his November 9, 2016 arrest.¹ Undoubtedly,
17 Defendant's lack of medication contributed to his poor decisions (consuming
18 methamphetamine and failing to return to BSSW). But Defendant appeared at BSSW on
19 October 21, and never called Officer Peterson after he failed to return.

20 The Court finds that Defendant did not comply with the probation officer's
21 directive that Defendant complete the BSSW intake process. Defendant previously failed
22 to comply with BSSW obligations (on October 12) while he was taking Risperdal. The
23 Court does not find that Defendant was incapable of returning to BSSW or contacting his

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25 ¹ Defendant was arrested on November 9, 2016. Defendant testified that he was
26 prescribed Risperdal while in custody after his arrest. Defendant testified he was taking
27 Risperdal at the time of this hearing on February 7, 2017. The Court inquired of
28 Defendant's competency at the outset of the proceedings. After hearing from Defendant
and his counsel, and asking Defendant questions, the Court determined Defendant
displayed no signs of incompetence. After Defendant's testimony, the Court was further
convinced Defendant showed no signs of incompetence.

1 probation officer when he was not medicated. Undoubtedly, Defendant's serious mental
2 health problems were a factor in his noncompliance, but they are not the sole cause of his
3 behavior. Defendant also used methamphetamine prior to October 21. Defendant's
4 counsel described this as "self-medicating" but it is also evidence of his failure to follow
5 his conditions of supervised release.

6 **c. (Allegation C) Methamphetamine Use**

7 Defendant submitted to drug testing on October 21, 2016. Defendant's drug test
8 returned positive for methamphetamine after testing by Alere Laboratory. No evidence
9 was presented to contradict the testing. Defendant's drug test on October 17 was
10 negative.

11 The Court finds Defendant used methamphetamine prior to October 21, in
12 violation of his terms of supervised release.

13 **IV. Recommendation**

14 Based on the foregoing and pursuant to 28 U.S.C. § 636(b) and LRCrim
15 57.6(d)(4), Rules of Practice for the District of Arizona, the undersigned Magistrate
16 Judge **RECOMMENDS** that the Honorable Steven P. Logan, United States District
17 Judge, after an independent review of the record, find Defendant violated the terms of
18 supervised release contained in Allegations A, B, and C.

19 This recommendation is not an order that is immediately appealable to the Ninth
20 Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(b)(1), Federal Rules of
21 Appellate Procedure, should not be filed until entry of the district court's judgment.

22 **IT IS ORDERED** setting a final disposition hearing for **March 14, 2017**, at **9:00**
23 **a.m.** before the Honorable Steven P. Logan, United States District Judge, in Courtroom
24 501, Sandra Day O'Connor U.S. Courthouse, 401 West Washington Street, Phoenix,
25 Arizona.

26 **IT IS FURTHER ORDERED** that the U.S. Probation Department shall prepare a
27 Disposition Report and the Defendant shall cooperate with the Probation Department in
28 its preparation of the Disposition Report.

